APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,831	02/18/2004	Roger D. Hewson		3730

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EXAMINER
GISHNOCK, NIKOLAI A

ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/780,831	HEWSON, ROGER D.
	Examiner	Art Unit	
	Nikolai A. Gishnock	3714	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on <u>02 June 2008</u>.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>19-29</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>19-29</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>18 February 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/2/2008</u>.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

In response to Applicant's amendments filed 6/2/2008, claims 1-18 are cancelled. Claims 19-29 are pending.

Response to Amendment

1.   The Declaration under 37 CFR §1.132, filed 12/31/2007, is insufficient to overcome the rejection of claims based upon 35 USC §103(a) as set forth in the last Office action because: The facts presented are not germane to the rejection at issue. The relevance of the evidence presented is directed to features of the Myers-Briggs Type Indicator® (MBTI®) personality sorting instrument. Wood at least clearly teaches an invention that is compatible with a number of personality sorters, including MBTI, at Para. 0109-0125. Evidence found in Attachments "A" & "B", which appears to be directed to MBTI alone, is insufficient to demonstrate the non-obviousness of the claims over the Wood, Bouchard, and Buffington references, because the use of MBTI is optional in the invention described in the prior art teachings. Further, the Declaration refers only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. To be given substantial weight in the determination of obviousness or nonobviousness, evidence of secondary considerations must be relevant to the subject matter as claimed, and therefore the Examiner must determine whether there is a nexus between the merits of the claimed invention and the evidence of secondary considerations. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 305 n.42, 227 USPQ 657, 673-674 n. 42 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986). The term "nexus" designates a factually and legally sufficient connection between the objective

evidence of nonobviousness and the claimed invention so that the evidence is of probative

value in the determination of nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing*

Ltd., 851 F.2d 1387, 7 USPQ2d 1222 (Fed. Cir.), cert. denied, 488 U.S. 956 (1988). In regards

to Attachment "C", pages 1-2, it appears that the Applicant compares "Topics" of the invention,

rather than the claims, to supposed features of MBTI, and on page 3, compares the claimed

functions to the personality categories of MBTI. Attachment "C", however, appears to convey

opinion and argument rather than provide a basis of facts. Although an affidavit or declaration

which states only conclusions may have some probative value, such an affidavit or declaration

may have little weight when considered in light of all the evidence of record in the application. *In*

re Brandstadter, 484 F.2d 1395, 179 USPQ 286 (CCPA 1973). See MPEP § 716.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 6/2/2008 was filed after the

mailing date of the final Office Action. The submission is in compliance with the provisions of 37

CFR 1.97. Accordingly, the information disclosure statement is being considered by the

examiner.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

> 1.   Determining the scope and contents of the prior art.
> 2.   Ascertaining the differences between the prior art and the claims at issue.
> 3.   Resolving the level of ordinary skill in the pertinent art.
> 4.   Considering objective evidence present in the application indicating obviousness
>   or nonobviousness.

4.   Claims 19-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et

al. (US 2002/0045154 A1), hereinafter known as Wood.

5.   Wood teaches: (a) defining attributes, characteristics, and purpose of each of a group of

twelve cognitive functions (an objective of the invention is to provide a method and system for

determining and classifying an individual's "personality DNA" based upon various personality

instruments, behavior, psychographics, demographics, beliefs, and preferences, Para. 0040),

wherein the twelve cognitive functions comprise reality (down-to-earth, Para. 0225), imagination

(creative, Para. 0214), analysis (intelligent, understanding, Para. 0217), intuition (Individualistic,

Intuitive, Para. 0211), listening (absorbed, non-verbal, Para. 0222), expressing (articulate,

expressive, dramatic, Para. 0212), cooperation (Team Player, contributor, Para. 0224),

independence (loners, freedom, Para. 0221), caution (conscientious, responsible, Para. 0223),

courage (bold, entrepreneurial, Para. 0219), adaptability (selfless, adaptable, Para. 0213), and

decisiveness (Born Leader, take-charge, Para. 0216) functions; (b) defining the structure of a

cognitive architecture system with the twelve functions working together in a complementary

way (In accordance with the present invention, a personality is defined depending on which

groupings of characteristics are chosen. The system allows for selection of a large number of

combinations of characteristics, and therefore allows for many different personality definitions

and measuring schemes. Since a user's personality is made up of a number of characteristics,

the present invention identifies and measures the characteristics of the user to classify the user

into a selected personality scheme, and matches advice, content, and other people with the

user based upon the results of selected tests, Para. 0045; it is understood that a grouping of

characteristics that define a personality work together in a complementary way); (c)

documenting the structure in a document comprising one or more of a computer, electronic

medium, video, paper, verbal, and audio formats (Still another advantage of the present

invention is that it makes possible the creation and delivery of content, advice, and people

profiles determined from a user's responses to a series of personality tests, demographics

questions, both on-line and off-line behavior, psychographic testing, life style and quality of life

questions, Para. 0050; on-line behavior is at least representative of computer and electronic

medium formats documenting the structure of a cognitive system); (d) utilizing the document to

educate one or more individuals about the structure of the cognitive architecture system (An

important advantage of the present invention is that it allows a user to perform an online self

evaluation of his personality traits and characteristics, Para. 0049; self-evaluation is understood

to be an educational process); (e1) enabling the one or more individuals to determine the

magnitude of preference for each of the group of twelve cognitive functions of an entity (the

present invention identifies and measures the characteristics of the user to classify the user into

a selected personality scheme, Para. 0045), utilizing a preference survey instrument, wherein

the entity is one or more individuals (user completes a personality test or a psychographics

questionnaire, Para. 0176); (e2) wherein the determining of the magnitude of preference is

based on knowledge of innate cognitive preferences, observed cognitive actions, and other

cognitive behaviors of the entity (user's responses to a series of personality tests, both on-line

and off-line behavior {observed actions and behaviors} and life style quality of life questions

{preferences}, Para. 0050); (e3) calculating the results of the preference survey instrument (In

accordance with the present invention, raw data provided by each user via their answers and

behaviors and collected are scored and compiled by algorithms and standardized into

alphanumeric representations, Para. 0181) and providing the results in the document format

(the system gathers information from database such as declared preferences, purchase history,

page view history, and click history of the individual, and compares this with the personality,

psychographic, behavior, and declared preference relevance values from all users to determine

the optimum content to display to the user. Content selected includes, but is not limited to, raw

scores on each scale, graphical representations of the scores, the title of the node or

classification, and descriptive text of the user's personality classification. Content selected may

also include stories, news, articles, and information, Para. 0295-0297; the results are

understood to include at least computer and electronic medium formats); (f) enabling the one or

more individuals to calculate the results of the preference survey instrument to quantify the

magnitude of preference for each of the functions, and to document a preference survey report

indicating the magnitude of preference for each of the twelve cognitive functions in one or more

of a computer, electronic medium, video, paper, verbal, and audio formats (Para. 0181 and

0295-0297; the user of Wood's system is, in this case, an enabled individual); (g) enabling one

or more individuals to utilize the cognitive architecture system of the twelve cognitive functions

and the determination of the magnitude of preference (dominance of a trait, Para. 0019) for: (g1)

defining the entity's magnitude of preference for the twelve functions (the system compares a

user's scores and results against the classification scheme, the system then determines the

closest match and presents that classification to the user, Para. 0282); (g2) defining the

strengths and weaknesses of the entity (the degree to which the user scored, or was

categorized in a particular scale, is represented numerically and presented with the letters to

represent relative strength of the scales, Para. 0233); (g3) defining the purpose of

understanding and developing better working relations based on the entity's magnitude of

preference (invention matches content, advice, and people {to a user} based on the data

provided and the classifications determined, Para. 0284); (g4) matching the entity with lifestyle

activity roles and employment activities (A user wishing to receive career advice may be asked

to provide job attribute preferences (i.e. Working outside, attention to detail, working on teams).

A user wishing to receive relationship advice may be asked to provide preference information

for behavior in their partner, Para. 0153); (g5) assisting the entity in using each of the cognitive

functions (Many companies try to improve communication between employees and offer

workshops and seminars to foster better understanding and communication among employees.

If each employee can understand the values and motivations behind his/her own personality

type and then understand those of the other types, then personality-based conflicts can be

recognized, understood, and better managed. This leads to a healthier work environment and

higher productivity, Para. 0037); (g6) assisting the entity in selecting the cognitive functions

most appropriate for use at a specific moment or situation (module is designed to offer

personalized advice to users based upon personality, psychographics, demographics, behavior,

declared preferences and any other data gathered, Para. 0305; it is understood this advice is

tailored by selection of preferences for cognitive functions {personality}, and inherently selected

based on the specific moment of a user's inquiry; and in regard to a specific situation {career,

relationships, and financial advice}); and (g7) assisting the entity in selecting the appropriate

sequence of using the cognitive functions (Para. 0037; inherently, managing and using

personality functions is done in sequence); and (i) providing one or more individuals with the

documentation of the preference survey instrument, the preference survey report, the structure

of the architecture system, in the document format (the system can construct and/or deliver

promotions and advertisements in real time. This is used when the user views a page with ads,

or the system delivers promotional materials via email or other electronic means. This

information together with the rest of the user's profile is compared to all available content and is

used to select the subject matter, the layout, and style of the promotional material, Para. 0299;

the system can also construct page layouts according to the user's classification including color,

font, use of graphics, and presentation of data, video and audio content, Para. 0303) [Claims

19, 24, & 27].

6.   Wood further broadly teaches: (a) segmenting the twelve cognitive functions into two

column sets (Whole Brain Model comprises thinking styles linked to particular regions of the

brain, with processes occurring on either the left or the right, Para. 0010-0019): (a1) wherein a

left column set of six functions shares a left-brain style of cognition comprising the reality,

analysis, listening, cooperation, caution, and adaptability functions (analytical, quantitative, fact-

based, Para. 0012); and (a2) wherein a right column set of six functions shares a right-brain

style of cognition comprising the imagination, intuition, expressing, independence, courage, and

decisiveness functions (intuitive, holistic, integrating, synthesizing, Para. 0014); (c) defining the

effectiveness of each of the functions as increased by using it in a complementary way with the

opposite function in the pair; and defining how each function provides abilities the other lacks (In

Herrmann's model, the four clusters of processing are typically available in each person, but

one or more of the clusters is naturally dominant in a person's temperament, similar to Jung's

theory. Through two decades of testing and applying his model to organizations, Herrmann

amassed findings which indicate that the population is evenly distributed among these four

types of thinking specialties. This data suggests that groups and societies operate in such a way

that each person's specialties of thought are balanced among the group as a whole. Although

people are not all created equal, different styles of thinking appear to serve equally weighed

roles in balancing each other to optimally achieve the group's common purposes, Para. 0010-

0019); (d) documenting the structure of the cognitive architecture system matched in pairs in a document format (Content selected includes, but is not limited to, raw scores on each scale, graphical representations of the scores, the title of the node or classification, and descriptive text of the user's personality classification. Content selected may also include stories, news, articles, and information, Para. 0295-0297); (e) using the matched pairs of functions to enable the entity to increase competence in utilizing the functions in a complementary and effective way (If each employee can understand the values and motivations behind his/her own personality type and then understand those of the other types, then personality-based conflicts can be recognized, understood, and better managed. This leads to a healthier work environment and higher productivity, Para. 0037) [Claims 21, 24, & 27].

7.   What Wood fails to teach is: (b) defining the groups of left-brain and right-brain styles as matched in pairs; wherein reality is paired with imagination, analysis with intuition, listening with expressing, cooperation with independence, caution with courage, and adaptability with decisiveness. However, Applicant has not disclosed that having the functions paired as specified solves any stated problem or is for any particular purpose. Moreover, it appears that the pairings of Extroversion with Introversion, Sensation with Intuition, Thinking with Feeling, and Judging with Perceiving of Wood (Para. 0227-0231) or the Applicant's instant invention would perform equally well for pairing cognitive functions based on left-brain- or right-brain-dominant-thinking styles. Accordingly, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified Wood such that the pairs consist of said functions of Reality with Imagination, Analysis with Intuition, Listening with Expressing, Cooperation with Independence, Caution with Courage, and Adaptability with Decisiveness, because such a modification would have been considered a mere design consideration, which fails to patentably distinguish over Wood [Claims 21, 24, & 27].

8.   Wood teaches the further step of six of the cognitive functions with the highest

magnitudes of preference among the twelve cognitive functions referred to as potential

strengths, and six of the cognitive functions with the lowest magnitudes of preference are

referred to as potential weaknesses [Claim 20], and the further step of defining that the cognitive

function with the higher magnitude of preference in each of the pairs is referred to as a potential

strength, and the cognitive function with the lower magnitude of preference in each of the pairs

is referred to as a potential weakness [Claims 23, 26, & 29] (the degree to which the user

scored, or was categorized in a particular scale, is represented numerically and presented with

the letters to represent relative strength of the scales, Para. 0233; the relative strength of the

categories of Wood implicitly may be referred to as "potential strengths" and "potential

weaknesses"; Within {the} database, all of this content is stored and each element is recorded

with a relative relevance strength indicator. A strength indicator value is stored in database for

each node for each classification scheme available, Para. 0290) [Claims 20, 23, 26, & 29].

9.   Wood teaches the step of advising one or more individuals in appropriately utilizing the

cognitive functions matched in the pairs, wherein the left-brain-style cognitive function in each of

the pairs of the complementary and polar-opposite cognitive functions is most appropriately

utilized before the right-brain-style cognitive function in the pair to prepare the right-brain-style

cognitive function to be utilized more effectively, enabling the entity to utilize each of the group

of twelve cognitive functions in the appropriate sequence to further improve competence,

effectiveness, and productivity in everyday real-life situations (In the 1970's and '80s, Ned

Herrmann conceived of different modes of thought occurring in various regions of the brain, in

the higher level cortex and lower level limbic system. His Whole Brain Model comprised four

quadrants of thinking styles linked to particular regions of the brain, with processes occurring on

the left or right; In Herrmann's model, the four clusters of processing are typically available in

each person, but one or more of the clusters is naturally dominant in a person's temperament, similar to Jung's theory. Through two decades of testing and applying his model to organizations, Herrmann amassed findings which indicate that the population is evenly distributed among these four types of thinking specialties. That is, 25% of the people show dominance in A-type analytical thinking, another 25% show dominance in B-type organized thinking, and so on around all four quadrants. This data suggests that groups and societies operate in such a way that each person's specialties of thought are balanced among the group as a whole. Although people are not all created equal, different styles of thinking appear to serve equally weighed roles in balancing each other to optimally achieve the group's common purposes. This generally fits with data in the 1970's by psychologists David Keirsey and Marilyn Bates. Their studies of married couples with Myers-Briggs testing showed an equal distribution among particular personality types: 25% were TJ's (favoring Thinking with Judging), 25% were FJ's (Feeling with Judging), 25% FP's (Feeling with Perceiving), and 25% TP's (Thinking with Perceiving). These Myers-Briggs types roughly equate to sides of the square Herrmann model (Herrman's AB side being TJ's, BC side FJ's, and so on). This data corroborates the understanding of thinking styles as a system in which each combination of thinking processes is offset and balanced by its corresponding opposite among the population as a whole, Para. 0010-0019; It is understood that the different styles of thinking reflect the use of both left-brain-style-first and right-brain-style-first thinking, and that the balancing of different styles of thinking among a population of left- and right- brain thinkers to optimally achieve the group's common purposes, causes improvement of competence, effectiveness, and productivity in everyday real-life situations) [Claims 22, 25, & 28].

Response to Arguments

10.   Applicant's arguments filed 6/2/2008 have been fully considered but they are not
persuasive.

11.   In response to Applicant's remarks, see pages 20-51, the rationale of design choice of a
particular twelve of the functions of Wood, and assigning particular names and groupings, was
sufficiently expressed in the final office action. Further, in order to overcome a finding of
obviousness over the prior art, Applicant must articulate why Examiner's rationale is incorrect in
cooperation with a showing of facts or evidence supporting the articulation. Applicant's
experimentation was well within the realm of reasonable experimentation, such that a person of
ordinary skill in the art at the time would easily be able to select a set of cognitive functions that
he felt would cover the spectrum of personality variations, in light of the knowledge gleaned
from the prior art (e.g. Wood, MBTI, Carl Jung, etc.) Thus, Applicant's arguments are not
persuasive.

Conclusion

12.   This is a substitute of applicant's earlier amendment, filed 12/31/2007. All claims are
drawn to the same invention claimed in the earlier amendment, and could have been finally
rejected on the grounds and art of record in the next Office action if they had been entered
earlier. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case.
See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37
CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within TWO
MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however,

event will the statutory period for reply expire later than SIX MONTHS from the mailing date of

this final action.

13.   Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Nikolai A. Gishnock whose telephone number is (571)272-1420. The

examiner can normally be reached on M-F 8:30a-5p.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Xuan M. Thai can be reached on 571-272-7147. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

        Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

would like assistance from a USPTO Customer Service Representative or access to the

automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

8/3/2008
/N. A. G./
Examiner, Art Unit 3714
/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3714